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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Implementation of the Subscriber Charge )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )

Policies and Rules Concerning )  
Unauthorized Changes of Consumers )  
Long Distance Carriers )

CC Docket No 94-129

REPLY COMMENTS OF  
TELCO COMMUNICATIONS GROUP, INC.

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## SUMMARY

Telco supports the Commission's efforts to develop presubscription rules that both protect consumers from unscrupulous practices and enhance competition by allowing consumers to move freely among competing services and providers.

Accordingly, Telco supports pro-consumer, pro-competition outcomes in four areas which were addressed by the *FNPRM* and the commenters.

First, primary carrier ("PC") verification proposals should be refined in several ways. The Commission should require verification of a PC change order by the submitting carrier only; should clarify that the submitting carrier is the carrier who contacts the customer and is selected by the customer as the customer's PC; and should require third-party verification whenever a LEC submits a PC change for local service or submits and executes a PC change for interexchange service provided by an affiliate. Telco also supports the imposition of verification requirements on in-bound calls.

Second, the Commission should take a number of actions regarding PC "freeze" services. Telco urges the Commission to find them unlawful pending the development of competition in local markets. If PC freeze services are permitted, then the Commission should apply the PC change verification rules to solicitations for PC freeze services; should require the LECs to provide real-time, electronic equal access to their PC freeze databases; and should require the LECs to permit other carriers to confirm a "freeze" customer's "thaw" as part of the same call in which the customer orders or verifies a PC change.

Third, Telco supports certain changes and clarifications to the rules governing customer remedies and carrier liability for unauthorized PC changes. Telco agrees that a “slammed” customer should pay service charges to the slamming carrier which the slamming carrier should then remit to the authorized carrier *in toto*, plus any difference in rates if the slamming carrier’s rates were lower. If the slamming carrier’s rates were higher, the customer should be required to pay only the lower rates of its preferred carrier. Regarding the apportionment of liability for an unauthorized PC change between the executing and submitting carriers, Telco supports the Commission’s approach. The Commission should also address unintentional PC changes. When a carrier’s error is inadvertent, Telco advocates a case-by-case approach to the allocation of liability.

Finally, Telco supports the *FNPRM*’s approach to customer notification requirements for resellers who change their underlying carriers. The *FNPRM* proposes a “bright-line” test based on subscriber reliance and on statements, if any, made by the reseller regarding the carrier it uses and changes it might make to its underlying service provider. By limiting liability to clearly defined circumstances, the proposal in the *FNPRM* is a significant improvement on the open-ended, case-by-case approach taken by an earlier FCC ruling. The proposed approach encourages conformance to the Commission’s standards since liability is triggered only if the reseller affirmatively commits to use a particular service provider.

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Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

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**REPLY COMMENTS OF  
TELCO COMMUNICATIONS GROUP, INC.**

Telco Communications Group, Inc. ("Telco") submits these Reply Comments in accordance with the Further Notice of Proposed Rule Making<sup>1</sup> ("*FNPRM*") captioned above. Telco is a facility-based provider of interexchange services committed to the competitive provision of telecommunications that meet the needs of consumers.<sup>2</sup>

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<sup>1</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration*, FCC 97-248 (released July 15, 1997) ("*FNPRM*").

<sup>2</sup> Telco is one of America's ten largest long distance carriers. It is a nationwide switch-based provider of long distance services to residential and commercial customers. Telco competes vigorously with larger interexchange carriers (IXCs) such as AT&T, MCI and Sprint.

Telco supports the Commission's adoption of rules and policies that both protect consumers from unscrupulous presubscription practices and enhance competition in the interstate, interexchange telecommunications marketplace. In the paragraphs which follow, Telco addresses four issues raised by the Commission in the *FNPRM* and by parties in their Comments: (1) verification procedures for orders to change a primary carrier ("PC"); (2) PC "freeze" services; (3) remedies and liability for unauthorized PC changes; and (4) customer notification requirements for resellers who change their underlying service provider.

#### I. PC CHANGE ORDER VERIFICATION RULES

The Telecommunications Act of 1996<sup>3</sup> ("1996 Act") imposes verification obligations on carriers who "submit or execute" a PC change.<sup>4</sup> The *FNPRM* proposes to define a "submitting" carrier as the carrier that requests a change in a consumer's service provider.<sup>5</sup> An "executing" carrier would be the carrier who "effects" such a request,<sup>6</sup> presumably by making the actual network or database changes required to re-direct the subscriber's traffic to the new carrier.

Although the 1996 Act refers to carriers who "submit or execute" PC changes, the *FNPRM* tentatively concludes that the Act does not require both the submitting and executing carriers to perform duplicative verification

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 151, *et. seq.*).

<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> *FNPRM* at ¶ 13.

<sup>6</sup> *Id.*

procedures.<sup>7</sup> The parties filing comments on this issue<sup>8</sup> generally agree that the Commission's definitions are adequate and that it is not necessary for the executing carrier to duplicate the submitting carrier's verification process.

Telco supports this view. The Commission should not require duplicative verification of a PC change order because doing so will impede competition without benefitting consumers. Customers who are contacted twice to verify their PC change will be confused and frustrated. The complexity, delay, and expense of duplicative verification rules will have a direct and adverse impact on the ability of competitors to quickly and efficiently switch customers from their old PC to Telco, thus slowing or forestalling consumer responses to competitively-driven price reductions or service improvements. By simplifying the process for consumers to respond to competitive differences among carriers, the Commission will enhance every carrier's ability to compete.

The *FNPRM* does not address, however, an increasingly common variation on the standard PC change scenario – the participation of multiple “submitting” carriers. Many consumers obtain interstate, interexchange service, for example, from a non-facility based carrier who resells service it obtains from a facility-based provider. If a reseller successfully telemarkets its services to a consumer and then provides a PC change order to its underlying provider, who then passes the change order along to the LEC, is the reseller the “submitting” carrier or is the underlying provider?

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<sup>7</sup> *Id.* at ¶ 14.

<sup>8</sup> See, e.g., Comments of Telecommunications Resellers Association (“TRA Comments”) at 8-9, Comments of Ameritech (“Ameritech Comments”) at 13-14, Comments of AT&T (“AT&T Comments”) at 2 to *FNPRM*.

The Commission should clarify that, where more than one carrier assists in the “submitting” process, the “submitting” carrier responsible for complying with the Commission’s verification rules is the carrier who contacts the customer and is selected by the customer as the customer’s PC. The underlying service provider should not be responsible for verifying the subscriber’s PC change order nor should the provider have any liability for the actions or inactions of the carrier who has the carrier-customer relationship with the subscriber.

Telco agrees with those commenters who observe that incumbent LECs (“ILECs”) present unique issues in this context.<sup>9</sup> ILECs who also provide long distance service may be both the submitting carrier and the executing carrier when they sell interexchange service to their local service subscribers. In the case of local exchange service, markets with competitive LECs (“CLECs”) have no established marketplace mechanism or Commission rule that requires a neutral third party to process local service PC changes, as the LECs do for PIC changes from one IXC to another. Because of the potential for anti-competitive behavior by the ILECs in these circumstances, the Commission asked commenters to address “whether incumbent LECs should be subject to different requirements and prohibitions because of any advantages that their incumbency gives them compared to carriers that are seeking to enter the local exchange markets.”<sup>10</sup> In particular, the Commission asked whether the verification

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<sup>9</sup> See, e.g., Comments of LCI International Telecom Corp. to *FNPRM* (“LCI Comments”), TRA Comments, AT&T Comments.

<sup>10</sup> *FNPRM* at ¶15.



methods available to the LECs should be limited to verification by an independent third party.<sup>11</sup>

Commenting parties other than ILECs maintain that the Commission should take steps to prevent the ILECs from abusing their position as the executing carrier when they execute PC changes for which they are also the submitting carrier or the affiliate of a submitting party.<sup>12</sup> Telco agrees and urges the Commission to require verification by a third party whenever a LEC submits a PC change for local service or submits and executes a PC change for interexchange service provided by an affiliate.

Some parties argue that the Commission should establish a neutral third party who would be responsible for administering both the verification and execution of PC change orders for local service as well as PC change orders for toll service where the ILEC has entered the long distance market.<sup>13</sup> Telco recognizes the potential for anti-competitive behavior by the ILECs and agrees that mechanisms are needed to protect competition through non-discriminatory verification and execution of PC change orders. At this stage in the development of local competition and in local carrier entry into interexchange markets, however, Telco does not support the specification of a particular entity or mechanism as a centralized clearinghouse for the verification and execution of all PC changes. Telco urges the Commission to allow market forces to shape

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<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., Comments of MCI ("MCI Comments") to *FNPRM* at 8, LCI Comments at 6-8, and TRA Comments at 9.

<sup>13</sup> See, e.g., Comments of Sprint to the *FNPRM* ("Sprint Comments"), MCI Comments, and TRA Comments.

an appropriate solution. This approach would harness carriers' incentives to police themselves and to develop an efficient mechanism for coordinating PC changes that would protect their customer bases from unauthorized PC changes.

The *FNPRM* also invited comment on the verification requirements for customer-initiated "inbound" calls and tentatively concluded that the same verification rules should apply to inbound and outbound calls because the potential for deceptive and misleading sales practices is the same for both kinds of calls.<sup>14</sup>

Many carriers that commented on this issue maintain that inbound calls should not be subject to verification requirements because the customer who initiates a call to a carrier has already confirmed its interest in switching service by taking the affirmative step of calling. The carriers emphasize that the cost of verifying such calls is high and unnecessary when the customer initiates contact.<sup>15</sup>

Telco agrees with the Commission that customers using inbound calls are as vulnerable to unscrupulous presubscription practices as customers contacted through outbound calls. Accordingly, Telco supports the imposition of verification requirements on such calls. Telco currently uses third party verification to confirm PIC changes resulting from inbound calls and has not experienced disproportionately higher costs for verifying inbound calls.

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<sup>14</sup> *FNPRM* at ¶ 19.

<sup>15</sup> See, e.g., Sprint Comments at 30; AT&T Comments at 22-23, LCI Comments at 11-12.

## II. PC "FREEZE" SERVICES

The Commission consolidated into this rulemaking the record developed in response to MCI's petition for rulemaking on the LECs' "PIC freeze" services.<sup>16</sup> Telco filed comments in support of MCI's petition and will not burden this record by reiterating those comments in detail in this pleading. The *FNPRM* invited additional comment on (1) whether to apply the verification procedures for PC changes to PC freeze solicitations, both for local service and interexchange service; and (2) certain proposed restrictions on LEC marketing of PC freeze services. The Commission identified a number of concerns raised by PC freeze services, all of which involve the potentially chilling effect that such services can have on competition by slowing down or burdening the process for subscribers to switch service providers. At the same time, the Commission noted that the services have the beneficial effect of protecting consumers from unauthorized PC changes.

Most commenters support the application of the PC change verification rules to PC freeze solicitations.<sup>17</sup> Telco's comments in response to MCI's petition for rulemaking on PIC freeze services noted that PC freezes can all too easily be used for anti-competitive purposes by entrenched ILECs who face competition. Accordingly, Telco urged the Commission to find them unlawful pending the development of competition in local markets. Telco also argued, however, that if PC freeze services are permitted, the Commission should adopt

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<sup>16</sup> MCI Petition for Rule Making, RM 9085 (filed Mar. 18, 1997). *Incorporated and made part of* CC Docket No. 94-129, *FNPRM* at ¶115.

<sup>17</sup> See, e.g., Comments of Bell Atlantic to *FNPRM* at 4; AT&T Comments at 18-21, TRA at 25.

rules to ensure that the services are not provided in an anti-competitive or discriminatory fashion. Accordingly, Telco agrees that the Commission should apply the PC change verification rules to PC freeze services in order to ensure that the solicitation and provision of such services are not “designed to enhance the competitive position of the incumbent carrier in a manner that may be at odds with the requirements of the Act and the Commission’s rules and orders.”<sup>18</sup>

Telco also urges the Commission to adopt additional protections against the anti-competitive and discriminatory use of PC freeze services. First, the Commission should require the LECs to provide other carriers, and the independent third parties they use to verify their PC change orders, with real-time, electronic equal access to the LECs’ PC freeze databases. Such access will enable carriers and their “verifiers” to discover a potential customer’s freeze service at the same time that the customer selects their service, just as the LECs and their long distance affiliates can do.

Second, the Commission should require the LECs to let other carriers confirm a “freeze” customer’s “thaw” as part of the same call in which the customer orders or verifies a PC change (e.g., by conferencing a LEC representative in during the carrier’s sales call to the customer or during the verification call, if it is separate, so that the LEC representative can confirm the “thaw” with the customer). Without this requirement, LECs can solicit a customer, obtain third party verification of the customer’s order, and confirm a “thaw” in a single telephone call to the customer, while forcing their competitors

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<sup>18</sup> *FNPRM* at ¶ 23.

to make multiple calls in addition to the sales and verification calls until both the customer and a LEC representative are available simultaneously to confirm a “thaw.”

### III. REMEDIES AND LIABILITY FOR UNAUTHORIZED PC CHANGES

Section 258(b) of the Act requires an unauthorized carrier to remit to the authorized carrier all amounts received from a slammed subscriber. The *FNPRM* seeks comment on various additional remedies for customers and carriers, as well as ways in which to determine which carrier(s) should be liable for an unauthorized PC change.<sup>19</sup>

The Commission sought comment on whether to relieve subscribers of any obligation to pay the unauthorized carrier.<sup>20</sup> The comments almost universally reject this approach as an unnecessary windfall to customers and as a potential inducement for consumers to claim they have been slammed when they have not. Several commenters argue that the customer should instead pay the charges from the slamming carrier and the slamming carrier should be required to remit all funds collected from the customer to the authorized carrier,<sup>21</sup> plus any difference in rates if the slamming carrier’s rates were lower. If the

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<sup>19</sup> *FNPRM* at ¶ 29.

<sup>20</sup> *Id.*

<sup>21</sup> To the extent that the authorized carrier incurs no costs (e.g., access charges) for the traffic, this approach may produce a small windfall. However, the authorized carrier will have collection expenses and the additional restitution, mandated by the Act, will help defray those costs. See *FNPRM* at ¶¶ 28-29.

slamming carrier's rates were higher, the customer should be required to pay only the lower rates of its preferred carrier.<sup>22</sup>

Telco supports this approach. Subscribers should not be absolved of all payment obligations when they have received service, even though the service was provided by an unauthorized carrier. Under the commenters' approach, the subscriber and the authorized carrier are treated equitably – the subscriber pays no more than what it would have paid had it not been slammed, and the unauthorized carrier receives no compensation for the services it provides to the slammed subscriber. This remedy eliminates any windfall for unscrupulous carriers who slam consumers.

The *FNPRM* also requested comment regarding the proper apportionment of liability between the executing and submitting carriers if one or both is responsible for an unauthorized PC change, whether the change is deliberate or unintentional. The Notice relies on a “but for” test to conclude that the submitting carrier will be liable for slamming whenever it fails to comply with the verification requirements, regardless of whether the executing carrier made the correct change to the subscriber's records. If the submitting carrier complies with the verification requirements and the executing carrier nevertheless switches the customer to the wrong carrier, the executing carrier will be liable. In short, the executing carrier will only be liable for erroneous PC changes if it was solely to blame.

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<sup>22</sup> See, e.g., Comments of United States Telephone Association to *FNPRM* (“USTA Comments”) at 12-18, AT&T Comments at 8-11, Ameritech Comments at 26-30.

Many commenters do not address this issue. Of those that do, some support the Commission's conclusion<sup>23</sup> and others suggest that "no-fault" unauthorized PC changes should be preserved.<sup>24</sup>

Telco supports the Commission's approach. The *FNPRM* does not adequately address, however, scenarios in which an erroneous or unauthorized PC change is made unintentionally. Telco believes that a submitting carrier who complies with the verification requirements but inadvertently designates the wrong number for a PC change should not receive the same treatment as a carrier who ignores the verification rules or intentionally slams subscribers. When the carrier's error is inadvertent, Telco advocates a case-by-case approach to the allocation of liability.

#### IV. CUSTOMER NOTIFICATION REQUIREMENTS FOR RESELLERS

The *FNPRM* invited comment on a petition filed by the Telecommunications Resellers Association ("TRA") regarding the customer notification obligations of resellers who change their underlying carriers.<sup>25</sup> An earlier Commission ruling had required resellers to notify their customers when they changed their underlying service provider if the identity of the underlying service provider was a material part of the subscriber's decision to take service. TRA petitioned the Commission to clarify this ruling and establish a "bright-line" test specifying when a reseller has a notification duty.

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<sup>23</sup> See, e.g., Ameritech Comments at 30.

<sup>24</sup> MCI Comments at 22.

<sup>25</sup> *FNPRM* at ¶ 36.

The *FNPRM* tentatively concludes that a bright line rule is appropriate and proposes that the rule should be based on the subscribers' reliance on statements made by the reseller that (i) the reseller would provide service using a particular carrier or (ii) the reseller would not change the underlying carrier.<sup>26</sup> The Commission also concluded that it should establish a "bright-line" test for determining whether a consumer has relied on the reseller's identification of its underlying carrier.<sup>27</sup>

Telco supports the *FNPRM*'s approach. By limiting liability to clearly defined circumstances, the proposal in the *FNPRM* is a significant improvement on the open-ended, case-by-case approach taken by the earlier ruling. In addition, the approach in the *FNPRM* maximizes a reseller's ability to conform its behavior to the Commission's standards since liability is triggered only by the reseller's affirmative commitment to customers to use a particular service provider.

## CONCLUSION

Telco supports the Commission's efforts to adopt rules and policies that maximize consumer protection from unlawful presubscription practices. Consumers also benefit from the improved service, lower prices, and innovative offerings stimulated by a competitive marketplace. The Commission rules must protect consumers with presubscription requirements that do not undermine the ability of consumers to move freely among competing services and providers.

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<sup>26</sup> *Id.* at ¶ 39.

<sup>27</sup> *Id.* at ¶ 40.



Telco urges the Commission to adopt the proposals and tentative conclusions in the *FNPRM* that properly balance these competing objectives.

Respectfully submitted,

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September 29, 1997


## CERTIFICATE OF SERVICE

I, Andrew Baer, hereby certify that on this 29th day of September 1997, true and correct copies of the preceding Reply Comments of Telco Communications Group, Inc. in CC Docket No. 94-129 were served by hand delivery upon the followings:

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September 29, 1997